

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

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CIRCUIT COURT OF COOK
COUNTY, ILLINOIS
LAW DIVISION
CLERK

THE NEEDLE COKER COMPANY and)
CHICAGO CARBON COMPANY,)

Plaintiffs,)

v.)

No.)

00L 014496
CALENDAR W
FRAUD

CITGO PETROLEUM CORPORATION)
and PDV MIDWEST REFINING, L.L.C.,)

Defendants.)

COMPLAINT

Plaintiffs The Needle Coker Company ("Needle") and Chicago Carbon Company ("Chicago Carbon"), through their undersigned counsel, bring this Complaint against Defendants CITGO Petroleum Corporation ("CITGO") and PDV Midwest Refining, L.L.C. ("PDVMR"), based on the Defendants' multi-year fraudulent overcharging for electricity. In support of this Complaint, Needle and Chicago Carbon state as follows:

JURISDICTION AND VENUE

1. Venue is appropriate in Cook County because the parties are found, have agents, and transact affairs in Cook County.

FACTS COMMON TO ALL COUNTS

A. The Nature of the Case

2. This case is about a three-year fraudulent billing scheme involving millions of dollars and vast amounts of electricity. Every month for at least three years, CITGO utilized its position as manager of specific operations of its corporate affiliate, PDVMR, to issue phony invoices, dummied-up bills, and false billing summaries, in a deliberate and successful

scam to shift to others huge electricity costs owed by PDVMR. The scheme was careful and deliberate, and CITGO planned a cover-up from the beginning. Contemporaneous internal CITGO e-mails, memoranda, and other documents (many of which are attached as exhibits to this Complaint) prove the plan, the execution, and the cover-up. As a direct result of CITGO's scheme, the Plaintiffs paid more than \$3 million for electricity they did not use. Moreover, PDVMR appropriated partnership opportunities from its partnership and its partners. This Complaint states claims for common law fraud, violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, breach of contract, and breach of fiduciary duty.

B. The Relationship of the Parties, Their Affiliates, and the Facility

3. A large industrial facility in Lemont, Illinois (the "Facility") is currently host to four different operations: (1) a refinery owned by PDVMR (the "PDVMR Refinery," or sometimes the "Refinery") operated by CITGO (sometimes called "the Operator"); (2) a needle coking plant (the "Needle Coker Plant") owned by Needle and operated by CITGO; (3) a calciner plant (the "Calciner Plant") owned in part by Needle and in part by Chicago Carbon, and operated by Chicago Carbon; and (4) a facility owned and operated by non-party Seneca Petroleum Co. ("Seneca"), which is a small tenant of PDVMR.

4. Plaintiff Needle (sometimes called "the Partnership") is an Illinois general partnership comprised of general partners Chicago Carbon (25% owner), Lemont Carbon, Inc. ("Lemont") (50% owner), and Defendant PDVMR (25% owner).

5. Plaintiff Chicago Carbon (sometimes also known as "UCD" or "Unocal Chemicals Division") is an Illinois general partnership.

6. Chicago Carbon and Lemont are ultimate subsidiaries of Union Oil Company of California ("Unocal"), are affiliates of each other, and are the majority (collectively 75%) partners of Needle.

7. Defendant CITGO is a Delaware corporation.

8. Defendant PDVMR is a limited liability corporation.

9. CITGO and PDVMR are ultimate subsidiaries of Petroleos de Venezuela, S.A., and are affiliates of each other.

C. Electricity Billing at the Facility -- Generally

10. All of the electricity used at the Facility, regardless of the ultimate user, is provided by Commonwealth Edison ("ComEd").

11. All of the electricity used at the Facility, regardless of the ultimate user, runs through one or more ComEd meters located at the PDVMR Refinery. As a result, ComEd bills the Operator of the PDVMR Refinery for all of the electricity used at the Facility, and the Operator of the Refinery bills the other users based in part on readings taken from internal meters.

12. The Operator of the PDVMR Refinery has always purportedly provided electricity to the other users at the Facility pursuant to an understanding, course of dealing, and course of conduct that electricity would be provided at cost.

D. The Electric Service Contract Between PDVMR and ComEd

13. Prior to August 1997, ComEd had charged for the electricity used at the Facility pursuant to "Rate 6L," which had been approved by the regulatory authorities for large commercial and industrial customers that met certain usage requirements.

14. In August 1997, PDVMR entered into an Electric Service Contract (the "Service Contract") with ComEd pursuant to "Rate CS," which changed the rate structure and significantly lowered the amount ComEd charged for electricity used at the Facility.

15. Because the Facility utilizes a substantial amount of electricity (for example, 41,463,224 kWh in the month of January 1999 alone), the Service Contract Rate CS provides substantial savings over the Rate 6L charges which were in place before the Service Contract was executed.

E. CITGO's Billing Practices -- 1997 Through Present

16. CITGO affirmatively stated to Needle and Chicago Carbon in the CITGO Invoices (defined below) that they were being billed for their electricity consumption at the rate being charged by ComEd. These statements were untrue. CITGO lied to Needle and Chicago Carbon in order to induce Needle and Chicago Carbon to pay more than their fair share of the electricity costs for the Facility.

17. Even before the Service Contract became effective, CITGO was considering how to utilize the rate reduction from ComEd so that CITGO and PDVMR could profit from Needle and Chicago Carbon. Between July and October 1997, a number of CITGO employees had candid discussions among themselves about the impact of the Service Contract. These employees believed that by concealing the rate reductions, CITGO could continue to bill Needle and Chicago Carbon at the old and more expensive Rate 6L, and thus could charge to Needle and Chicago Carbon a portion of the costs attributable to electricity actually used by the Refinery, which was owned by PDVMR and operated by CITGO.

18. In a number of internal e-mails and memoranda, these CITGO employees acknowledged that electricity purchased by PDVMR from ComEd would be resold to Needle

and Chicago Carbon at a profit. For example, in a memorandum summarizing a July 30, 1997 CITGO internal meeting, the participants stated that under the Service Contract, "Needle Coker and UCD will continue to be 'profit centers' to the refinery -- i.e., we will sell them electricity at a higher rate than we pay." See Meeting Notes - Discussion on Billing Structure as Impacted by ComEd Rate Reduction (a true and correct copy of which is attached hereto as Exhibit A), Discussion ¶ 5.

19. At the same meeting, CITGO employees discussed whether they should "disclose any information about the new rate structure [under the Service Agreement with ComEd] to UCD [Chicago Carbon]." The memo summarizing this meeting reflected the dual importance to CITGO of: (a) not disclosing this information to Needle and Chicago Carbon, and (b) arriving at a plan to deflect their questions about the cost of electricity:

Should the Refinery divulge any of the rate reduction information to UCD? This would avoid the situation in which questions regarding the billing structure come up. However, questions regarding the allocation of savings could arise. . . . If the decision is made not to disclose any information about the new rate structure to UCD, we will need to develop a response to their inevitable questions regarding the reduction efforts.

See Exhibit A, Discussion ¶¶ 4, 7.

20. At the July 30, 1997 meeting, CITGO employees developed an "action plan" that included the following item:

Continue simulating a separate 6L bill as currently done. The billing methodology will be as follows: Complete 6L bill for Refinery, UCD, Needle Coker and Seneca. Determine UCD, Needle Coker and Seneca bill as previously done. The difference between the combined bill issued from ComEd and what is owed by UCD, Needle Coker and Seneca will comprise the Refinery portion.

See Exhibit A, Action Plans and Responsibilities ¶ 1.

21. In other words, in accordance with the action plan adopted at the July 30, 1997 meeting, CITGO would create a fake Rate 6L bill to make it appear that ComEd was still billing the PDVMR Refinery at those rates for electricity used by it, and would bill Needle, Chicago Carbon, and Seneca according to the higher Rate 6L that was no longer in effect under the Service Contract with ComEd. CITGO would then subtract the fabricated Rate 6L total paid by Needle, Chicago Carbon, and Seneca from the lower Rate CS total actually billed by ComEd under the Service Contract, and this would determine the amount CITGO would pay on behalf of PDVMR for the "Refinery portion." Thus, CITGO would "back into" the amount to be paid for the Refinery's electricity costs based on the deliberate overbilling of Needle, Chicago Carbon, and Seneca.

22. This plan to defraud Needle, Chicago Carbon, and Seneca into unwittingly becoming "profit centers" for the PDVMR Refinery was developed with the knowledge and participation of high level CITGO officers including Jim Branch, a CITGO Vice President who was the highest ranking CITGO official and employee working at the PDVMR Refinery in 1997.

F. The Fabricated Invoices to Needle and Chicago Carbon

23. After the Service Contract became effective, CITGO implemented the "action plan" developed at the July 30, 1997 meeting. CITGO obtained "simulated" Rate 6L bills from ComEd on a monthly basis so that CITGO could continue to bill Needle and Chicago Carbon as if ComEd's rates had not changed, generating invoices (the "CITGO Invoices") using the old higher Rate 6L rather than the new lower Rate CS established in the Service Contract. CITGO affirmatively stated to Needle and Chicago Carbon in the CITGO Invoices that they were being billed for their electricity consumption at the rate being charged by ComEd for the

electricity they were using. The CITGO Invoices, however, falsely represented that the higher Rate 6L number was the amount actually being charged by ComEd for Needle and Chicago Carbon's electricity consumption. True and correct copies of the CITGO Invoices submitted to Needle and Chicago Carbon between August 1997 and December 1999 are attached as Group Exhibits B and C, respectively.

24. Under the heading "DESCRIPTION," the CITGO Invoices clearly state, inter alia: "COMMONWEALTH EDISON BILLING FOR YOUR ACCOUNT BASED ON USAGE." Under that description, CITGO included line items that showed the metered usage, and the rates purportedly being charged by ComEd for that usage. However, the rates shown for these line items on the CITGO Invoices actually reflected the higher 6L rates charged by ComEd before August 1997, rather than the lower CS rates that were actually being charged by ComEd under the Service Contract beginning in August 1997.

25. Each month, CITGO also sent to Needle and Chicago Carbon separate documents, generated by CITGO, purportedly summarizing the charges to be paid by Needle, Chicago Carbon, Seneca, and the Refinery (the "Summary"). The Summary also supposedly totaled the aggregate charges billed by ComEd for the entire Facility. True and correct copies of the Summaries between August 1997 and December 1999 are attached hereto as Group Exhibit D. The handwriting on the pages which comprise Group Exhibit D did not appear on the Summaries when they were sent by CITGO to Needle and Chicago Carbon. Instead, that handwriting (which discloses the substantially lower charges actually billed to CITGO by ComEd, and the substantially lower amounts actually paid for the PDVMR Refinery's usage, after allowing for the inflated charges paid by Needle and Chicago Carbon) was added by

CITGO personnel to their copies of the Summaries after they were sent to Needle and Chicago Carbon.

26. The type-written charges on the Summary reflect the costs that would have been incurred under the old 6L rate, rather than the lower charges actually paid by CITGO under the new CS-Service Contract beginning in August 1997. The inflated charges on the Summaries attributed to Chicago Carbon, Needle, and Seneca are the exact charges invoiced by CITGO and paid by those companies. The type-written charges on the Summaries attributed to the PDVMR Refinery, however, and the type-written charges reflecting the "Total" for the entire Facility, were totally fabricated and were substantially higher than the actual amounts paid by CITGO to ComEd. The handwriting added to the Summaries by CITGO personnel after they were sent to Needle and Chicago Carbon reflect the lower amounts actually paid to ComEd, rather than the fabricated higher amounts CITGO represented that it had paid to ComEd. In other words, after sending the Summaries with inflated amounts to Needle Coker and Chicago Carbon, CITGO internally adjusted the amounts appearing on the Summaries to reflect the actual lower amounts paid by CITGO to ComEd. All of this was concealed by CITGO.

27. A comparison of CITGO's statements in the Summaries issued to Needle and Chicago Carbon with the charges actually billed by ComEd and paid by CITGO illustrates the magnitude of CITGO's fraud, as reflected in the following chart reflecting these events between August 1997 and December 1999:

	Fabricated Amount Summaries State CITGO Paid for Electricity Used at the PDVMR Refinery	Amount CITGO Actually Paid for Electricity Used at the PDVMR Refinery	Fabricated Amount Summaries State CITGO Paid for Total Electricity Used at the Facility	Amount CITGO Actually Paid for Total Electricity Used at the Facility
August 1997	2,346,858.80	2,291,387.11	2,659,698.44	2,604,226.75
September 1997	2,272,476.68	1,735,599.42	2,503,798.96	1,966,921.70
October 1997	1,807,759.16	1,658,693.25	2,001,926.53	1,852,860.62
November 1997	1,905,907.36	1,627,840.72	2,166,153.95	1,888,087.37
December 1997	2,235,237.58	1,847,894.89	2,538,386.32	2,151,043.67
January 1998	2,012,967.47	1,638,221.66	2,295,313.17	1,920,567.36
February 1998	1,823,139.22	1,464,933.92	2,100,651.89	1,742,446.59
March 1998	1,981,228.01	1,601,750.49	2,247,041.66	1,867,564.14
April 1998	2,149,514.14	1,738,407.35	2,438,578.48	2,027,471.69
May 1998	1,163,706.85	897,924.97	1,431,182.53	1,165,400.65
June 1998	1,847,823.30	1,361,479.20	2,123,149.93	1,636,805.83
July 1998	2,378,621.76	1,824,010.35	2,709,065.47	2,154,454.07
August 1998	2,239,043.90	1,706,846.02	2,525,910.58	1,993,712.70
September 1998	2,264,691.63	1,734,274.73	2,569,538.35	2,039,121.45
October 1998	2,097,005.43	1,612,983.75	2,378,218.63	1,984,196.95
November 1998	2,035,742.95	1,557,620.11	2,293,615.05	1,815,192.21
December 1998	2,157,454.06	1,687,076.45	2,400,489.24	1,930,111.63
January 1999	1,685,417.79	1,311,422.03	1,942,489.74	1,568,493.98
February 1999	2,109,719.35	1,478,641.01	2,343,213.20	1,712,134.86
March 1999	1,753,822.70	952,404.22	2,026,742.33	1,225,323.85
April 1999	2,017,724.88	1,657,696.97	2,193,616.17	1,748,074.83
May 1999	2,052,192.71	1,672,087.26	2,230,372.07	1,764,024.83
June 1999	2,271,839.37	1,628,166.91	2,511,601.88	1,867,929.42
July 1999	2,296,438.68	1,766,747.11	2,543,348.47	2,013,656.90
August 1999	2,365,815.17	1,804,031.09	2,607,647.66	2,045,863.59
September 1999	2,260,008.09	1,626,782.21	2,486,482.16	1,853,261.27
October 1999	2,134,972.88	1,659,609.90	2,350,250.76	1,874,887.79
November 1999	2,013,670.30	1,553,894.26	2,213,634.07	1,753,858.03
December 1999	2,422,153.17	1,900,487.33	2,671,853.67	2,150,187.67
Total	60,102,953.39	46,998,914.69	67,503,971.36	54,317,882.40

28. In summary, CITGO allocated all of the savings under Rate CS to the PDVMR Refinery, generated false CITGO Invoices and Summaries to prevent Needle and

Chicago Carbon from discovering its deception, and subsidized the cost of electricity usage at the PDVMR Refinery by inflating the electricity costs paid by Needle and Chicago Carbon.

29. Since August 1997, Needle and Chicago Carbon have paid approximately \$3 million in electricity costs attributable to electricity actually used by the PDVMR Refinery, which is owned by PDVMR and operated by CITGO.

G. CITGO's Active Concealment of the True Electricity Costs

30. Needle is governed by an Executive Committee. Ron Lee is a Unocal employee who is both Chicago Carbon's general manager, and a member of Needle's Executive Committee. Inquiries to CITGO from Mr. Lee about the new billing arrangement with ComEd were consistently deflected by CITGO representatives in accordance with a conscious plan to conceal information from Needle and Chicago Carbon about the true cost of electricity at the Facility. It even appears that CITGO employed its legal counsel to assist in the perpetration of the fraud.

31. For instance, on August 6, 1997, Rupa Natarajan, a CITGO employee, wrote a memo to a CITGO lawyer about the ComEd rate reductions and asked: "If we continue to operate in the 'Confidentiality mode', how should Refinery personnel react to any future questions that may be directed from Unocal to Refinery personnel?" A true and correct copy of this August 6, 1997 letter is attached hereto as Exhibit E.

32. A few weeks later, on September 2, 1997, Lois Summerlott of CITGO wrote a letter to Chicago Carbon stating that "the method of billing Needle Coker/UCD will remain the same. . . ." A true and correct copy of this letter is attached hereto as Exhibit F. It turns out, however, that the "method of billing Needle Coker/UCD" did not remain the same,

because CITGO began generating false invoices to conceal the fact that CITGO was no longer billing Needle and Chicago Carbon at the rates billed by ComEd.

33. The fraud and cover-up appears to have further involved CITGO's lawyers in that an e-mail from Glenn Rabinak of CITGO on September 24, 1997, titled: "Heads Up -- Ron Lee is Asking Questions about Electricity," stated that "the form of the letter sent by Lois [Summerlott] [Exhibit F] was carefully scripted based upon extensive legal counsel." A true and correct copy of this e-mail is attached hereto as Exhibit G.

34. A series of CITGO e-mails in mid-October 1997 reflect how many people at CITGO were involved in the deception, and to what lengths they went to deliberately mislead Mr. Lee. True and correct copies of these e-mails are attached hereto as Group Exhibit H. For instance, an e-mail from Jim Tancredi of CITGO on October 15, 1997 reacted to a conversation between CITGO employee Gary Ephraim and Mr. Lee, in which CITGO responded to Mr. Lee's inquiries about electricity billing rates in a manner that avoided disclosure of the true nature of the new Rate CS-Service Contract billing arrangement with ComEd. Mr. Tancredi's praise of Mr. Ephraim's evasive responses to Mr. Lee's inquiries reveals the depths of CITGO's calculation and deceit: "Good answers for Round 1. Glad your [sic] on our side. I believe this may be a 14 rounder though so keep your gloves high." Jim Branch, a CITGO Vice President who in 1997 was the top official at the PDVMR Refinery, received many, and perhaps all, of these e-mails.

35. Another CITGO employee, Rupa Natarajan, cautioned in an October 16, 1997 e-mail (part of Exhibit H) that a decision to disclose the actual ComEd bill would provide Needle and Chicago Carbon with "a clear insight into how much the Refinery uses and pays." Since this would have revealed to Needle and Chicago Carbon the truth -- that they were being

defrauded on a monthly basis -- the disclosure was not made, and the truth was actively concealed by numerous CITGO personnel.

**COUNT I
COMMON LAW FRAUD
(DEFENDANT CITGO)**

36. Needle and Chicago Carbon incorporate by reference paragraphs 1 through 35 above as if fully set forth herein.

37. As set forth with particularity in the paragraphs below, CITGO made knowingly false representations of fact to Needle and Chicago Carbon with the intent to induce Needle and Chicago Carbon to rely upon them, and Needle and Chicago Carbon did reasonably and justifiably rely upon those false representations and suffered great damage as a result.

38. At all material times, CITGO conducted the affairs of PDVMR at the Refinery pursuant to an operating agreement by which PDVMR vested in CITGO the authority to operate, manage, and control the Refinery. In accordance with that agreement, CITGO had the ability and authority to charge Needle and Chicago Carbon for electricity provided by ComEd under the Service Contract with PDVMR.

39. CITGO knowingly devised a scheme or artifice to defraud Needle and Chicago Carbon, and to obtain money from Needle and Chicago Carbon by false or fraudulent pretenses. Every month for three years, CITGO knowingly submitted false invoices for electricity that overstated the charges attributable to Needle's and Chicago Carbon's electricity use. This was part of a deliberate scheme to mislead Needle and Chicago Carbon into paying CITGO and PDVMR for electricity Needle and Chicago Carbon did not use, and for subsidizing the electricity costs of CITGO and PDVMR at the Refinery. In furtherance of this

scheme or artifice to defraud, CITGO knowingly made the following misrepresentations to Needle and Chicago Carbon:

- a. Each month CITGO misrepresented to Needle and to Chicago Carbon on the CITGO Invoices that the amount charged to each was the "Commonwealth Edison Billing for Your Account Based on Usage." In fact, the amount charged on the CITGO Invoices was not the amount charged by ComEd for Needle's and Chicago Carbon's usage, but was an amount fabricated by CITGO based on rates that no longer were in effect with ComEd for the Facility.
- b. CITGO misrepresented to Needle and to Chicago Carbon on the Summaries that the amount paid by the PDVMR Refinery for the electricity it used was millions of dollars higher than the amount that CITGO actually paid ComEd for electricity used at the PDVMR Refinery.
- c. CITGO misrepresented to Needle and to Chicago Carbon on the Summaries that the total charge for electricity used at the Facility was millions of dollars higher than the total amount that was actually paid to ComEd for electricity used at the Facility.
- d. CITGO misrepresented to Needle and to Chicago Carbon in the September 2, 1997 letter, attached hereto as Exhibit F, that "the method of billing Needle Coker/UCD will remain the same," when the method did not in fact remain the same: CITGO began generating false invoices to conceal the fact that CITGO was no longer billing Needle and Chicago Carbon at the rates billed by ComEd.

40. PDVMR had earlier entered into the Needle Partnership with Chicago Carbon and Lemont. In 1997, PDVMR then entered into the Service Contract with ComEd. From that point forward, CITGO used PDVMR's Service Contract and PDVMR's Needle partnership relationships in furtherance of CITGO's scheme to defraud by upstreaming the proceeds of CITGO's fraudulent activities to PDVMR. In this manner, CITGO caused PDVMR to receive monthly payments from Needle and Chicago Carbon, who secretly and unwittingly functioned, in the words of CITGO itself, as the electricity "profit center" for the PDVMR Refinery.

41. CITGO knew that the amounts charged to Needle and to Chicago Carbon on the CITGO Invoices were not the amounts charged by ComEd based on the electricity usage of Needle and Chicago Carbon. Moreover, CITGO knew that the amounts listed on the Summaries for the Refinery's portion of electricity costs and the Facility's total electricity costs were not the amounts paid by CITGO to ComEd for the PDVMR Refinery and the Facility.

42. CITGO misrepresented the amount of ComEd's charges for electricity used at the PDVMR Refinery, the Needle Coker Plant, the Calciner Plant, and the Facility generally, in order to induce Needle and Chicago Carbon to pay more than their share of electricity charges billed by ComEd.

43. Needle and Chicago Carbon reasonably and justifiably relied to their detriment on CITGO's misrepresentations when they paid the CITGO Invoices, believing their payments were their shares of the total charge from ComEd for electricity used at the Facility, based on usage.

44. Needle and Chicago Carbon suffered great damage as a proximate result of their reliance on CITGO's misrepresentations to the extent of the difference between their payments to CITGO pursuant to the fraudulent CITGO Invoices, and what their actual shares should have been of the total charge from ComEd for electricity used at the Facility, based on usage. These damages amount to more than \$1.8 million for Needle, and more than \$1 million for Chicago Carbon.

45. Because these deliberate and repeated fraudulent representations reflect CITGO's malicious, reckless, willful and wanton disregard for both the truth and the rights of others, Needle and Chicago Carbon are entitled to recover punitive damages.

WHEREFORE, Plaintiffs The Needle Coker Company and Chicago Carbon Company pray for a judgment in their favor and against Defendant CITGO Petroleum Corporation in the amount of the actual damages suffered by the Plaintiffs, punitive damages, interest, the attorneys' fees, costs, and expenses of prosecuting this suit, and for all other and further relief deemed appropriate by the Court.

COUNT II
ILLINOIS CONSUMER FRAUD ACT
(DEFENDANT CITGO)

36. Needle and Chicago Carbon incorporate by reference paragraphs 1 through 35 above as if fully set forth herein.

37. As set forth with particularity in the paragraphs below, CITGO's misrepresentations constitute deceptive acts or practices that violate the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1 et seq., because CITGO made those misrepresentations in order to induce Needle and Chicago Carbon to pay more than their share of electricity charges billed by ComEd, so that Needle and Chicago Carbon would secretly and unwittingly function, as described by CITGO, as electricity "profit centers" for the PDVMR Refinery.

38. At all material times, CITGO conducted the affairs of PDVMR at the Refinery pursuant to an operating agreement by which PDVMR vested in CITGO the authority to operate, manage, and control the Refinery. In accordance with that agreement, CITGO had the ability and authority to charge Needle and Chicago Carbon for electricity provided by ComEd under the Service Contract with PDVMR.

39. CITGO knowingly devised a scheme or artifice to defraud Needle and Chicago Carbon, and to obtain money from Needle and Chicago Carbon by false or fraudulent

pretenses. Every month for three years, CITGO knowingly submitted false invoices for electricity that overstated the charges attributable to Needle's and Chicago Carbon's electricity use. This was part of a deliberate scheme to mislead Needle and Chicago Carbon into paying CITGO and PDVMR for electricity Needle and Chicago Carbon did not use, and for subsidizing the electricity costs of CITGO and PDVMR at the Refinery. In furtherance of this scheme or artifice to defraud, CITGO knowingly made the following misrepresentations to Needle and Chicago Carbon:

- a. Each month CITGO misrepresented to Needle and to Chicago Carbon on the CITGO Invoices that the amount charged to each was the "Commonwealth Edison Billing for Your Account Based on Usage." In fact, the amount charged on the CITGO Invoices was not the amount charged by ComEd for Needle's and Chicago Carbon's usage, but was an amount fabricated by CITGO based on rates that no longer were in effect with ComEd for the Facility.
- b. CITGO misrepresented to Needle and to Chicago Carbon on the Summaries that the amount paid by the PDVMR Refinery for the electricity it used was millions of dollars higher than the amount that CITGO actually paid ComEd for electricity used at the PDVMR Refinery.
- c. CITGO misrepresented to Needle and to Chicago Carbon on the Summaries that the total charge for electricity used at the Facility was millions of dollars higher than the total amount that was actually paid to ComEd for electricity used at the Facility.
- d. CITGO misrepresented to Needle and to Chicago Carbon in the September 2, 1997 letter, attached hereto as Exhibit F, that "the method of billing Needle Coker/UCD will remain the same," when the method did not in fact remain the same: CITGO began generating false invoices to conceal the fact that CITGO was no longer billing Needle and Chicago Carbon at the rates billed by ComEd.

40. PDVMR had earlier entered into the Needle Partnership with Chicago Carbon and Lemont. In 1997, PDVMR then entered into the Service Contract with ComEd. From that point forward, CITGO used PDVMR's Service Contract and PDVMR's Needle

Partnership relationships in furtherance of CITGO's scheme to defraud by upstreaming the proceeds of CITGO's fraudulent activities to PDVMR. In this manner, CITGO caused PDVMR to receive monthly payments from Needle and Chicago Carbon, who secretly and unwittingly functioned, in CITGO's words, as the electricity "profit center" for the PDVMR Refinery.

41. CITGO knew that the amounts charged to Needle and to Chicago Carbon on the CITGO Invoices were not the amounts charged by ComEd based on electricity usage by Needle and Chicago Carbon. Moreover, CITGO knew that the amounts listed on the Summaries for the Refinery's portion of electricity costs and the Facility's total electricity costs were not the amounts paid by CITGO to ComEd for the PDVMR Refinery and the Facility.

42. CITGO misrepresented the amount of ComEd's charges for electricity used at the PDVMR Refinery, the Needle Coker Plant, the Calciner Plant, and the Facility generally, with the intent to induce Needle and Chicago Carbon to pay more than their share of electricity charges billed by ComEd.

43. CITGO's misrepresentations occurred in the course of conduct involving trade or commerce affecting residents of Illinois, because it involved the sale and purchase of electricity between and among companies that operate industrial facilities in Illinois.

44. Needle and Chicago Carbon suffered great damage as a proximate result of their reliance on CITGO's misrepresentations to the extent of the difference between their payments to CITGO pursuant to the fraudulent CITGO Invoices, and what their actual shares should have been based on usage of the total charge from ComEd for electricity used at the Facility. These damages amount to more than \$1.8 million for Needle, and more than \$1 million for Chicago Carbon.

45. Because these deliberate and repeated fraudulent representations reflect CITGO's malicious, reckless, willful and wanton disregard for both the truth and the rights of others, Needle and Chicago Carbon are entitled to recover punitive damages.

WHEREFORE, Plaintiffs The Needle Coker Company and Chicago Carbon Company pray for a judgment in their favor and against Defendant CITGO Petroleum Corporation in the amount of the actual damages suffered by the Plaintiffs, punitive damages, interest, the attorneys' fees, costs, and expenses of prosecuting this suit, and for all other and further relief deemed appropriate by the Court.

**COUNT III
BREACH OF CONTRACT
(DEFENDANT CITGO)**

36. Needle and Chicago Carbon incorporate by reference paragraphs 1 through 35 above as if fully set forth herein.

37. Needle, Chicago Carbon, and CITGO established, through a course of dealing, course of conduct, and an understanding reached over a lengthy period of time, a valid and enforceable agreement pursuant to which CITGO agreed to provide electrical service, and Needle and Chicago Carbon agreed to pay for this electrical service at cost.

38. CITGO breached its agreement by billing Needle and Chicago Carbon significantly more for electricity service than it cost CITGO to obtain that service from ComEd.

39. Needle and Chicago Carbon suffered great injury as a proximate result of CITGO's breach when they paid the CITGO Invoices without knowing that those Invoices were in breach of the agreement. Needle has suffered actual damages of more than \$1.8 million, and Chicago Carbon has suffered actual damages of more than \$1 million.

40. Needle and Chicago Carbon have fully performed their obligations, and any conditions precedent required of them, under their agreement with CITGO.

WHEREFORE, Plaintiffs The Needle Coker Company and Chicago Carbon Company pray for a judgment in their favor and against Defendant CITGO Petroleum Corporation in the amount of the actual damages suffered by the Plaintiffs, interest, the costs and expenses of prosecuting this suit, and for all other and further relief deemed appropriate by the Court.

COUNT IV
BREACH OF FIDUCIARY DUTY
(DEFENDANT PDVMR)

36. Needle incorporates by reference paragraphs 1 through 35 above as if fully set forth herein.

37. As a general partner in Needle, PDVMR owed fiduciary duties of loyalty and care to Needle and PRVMR's fellow partners that obligated PDVMR to act with utmost good faith and honesty in all dealings and transactions related to the Partnership.

38. PDVMR, by itself or through its agent CITGO, breached its fiduciary duties to Needle and PDVMR's fellow partners by, among other things:

- a. suppressing original ComEd bills that showed the true cost of electricity provided to Needle;
- b. manufacturing and distributing inaccurate invoices for electricity provided to Needle; and
- c. charging Needle inflated electricity rates for PDVMR's own financial gain.

39. Furthermore, PDVMR, by itself or through its agent CITGO, usurped a Partnership business opportunity for its own benefit by, among other things:

- a. availing itself of a favorable opportunity to receive electricity from ComEd at reduced rates that would also have been favorable and important to the business of Needle;
- b. failing to present that business opportunity to Needle so that Needle could decide, in light of a full disclosure of all pertinent facts, whether to avail the Partnership of that opportunity; and
- c. actively concealing the true relationship between PDVMR and ComEd, in order to prevent Needle from availing itself of this Partnership opportunity.

40. Needle has suffered great injury as a proximate result of PDVMR's breaches of fiduciary duties, and the damages suffered by Needle exceed \$1.8 million.

41. Because these deliberate and repeated fraudulent actions, omissions, and self-interested transactions reflect PDVMR's malicious, reckless, willful and wanton disregard for the truth, the rights of others, and PDVMR's fiduciary obligations to the Partnership and PDVMR's fellow partners, Needle is entitled to recover punitive damages.

WHEREFORE, Plaintiff The Needle Coker Company prays for a judgment in its favor and against Defendant PDV Midwest Refining, L.L.C. ordering an accounting and disgorgement of all profits obtained by PDV Midwest Refining, L.L.C. in breach of its fiduciary duties, awarding the amount of the actual damages suffered by the Plaintiff, interest, the

attorneys' fees, costs, and expenses of prosecuting this suit, and providing for all other and further relief deemed appropriate by the Court.

DATED: December 14, 2000

THE NEEDLE COKER COMPANY and CHICAGO
CARBON COMPANY

By: Frederic R. Klein
One of Their Attorneys

Frederic R. Klein
Roger A. Lewis
Hillary Levitt Dunn
GOLDBERG, KOHN, BELL, BLACK,
ROSENBLOOM & MORITZ, LTD.
55 East Monroe Street
Suite 3700
Chicago, Illinois 60603
(312) 201-4000
Firm ID No. 24139